IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 27182 of 2005(J)

PETITIONER:

V.S.VASUDEVAN,
S/O.VALAPARAMBIL SANKUNNI,
VALAPARAMBIL HOUSE, THRITHALLUR AMSOM & DESOM,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENT:

THE FEDERAL BANK LTD.,
VADANAPPILLY BRANCH, VADANAPPILLY,
THRISSUR.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 27182/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE E.P.434/03 DATED 29.8.03 FILED BY THE RESPONDENT BEFORE IIND ADDL. SUB COURT, THRISSUR.

EXT.P2: TRUE COPY OF THE OBJECTION DATED 30.6.05 FILED BY THE PETITIONER ALONG WITH 3RD JUDGMENT DEBTOR AGAINST EXT.P1.

EXT.P3: TRUE COPY OF THE E.A.1252/05 IN E.P.434/03 IN O.S.1051/01 DATED 1.7.2005 FILED BY THE PETITIONER.

EXT.P4: TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER DATED 7.9.05.

EXT.P5: TRUE COPY OF THE RELEVANT PAGES OF RATION CARD BELONG TO THE PETITIONER.

EXT.P6: TRUE COPY OF THE ORDER DATED 3.8.05 IN E.A.1252/05 IN E.P.434/03 IN O.S.1051/01 PASSED BY THE HONOURABLE SUBORDINATE JUDGE OF THRISSUR.

RESPONDENT'S EXTS.:

EXT.R1(a): PHOTO COPY OF DECREE IN O.S.NO.1051/2001 OF THE SUB COURT, THRISSUR DATED 31.10.2002.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.27182 of 2005

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Dated: 7th June, 2007

JUDGMENT

Ext.P6 order passed by the execution court dismissing an application submitted by the petitioner, the 2nd judgment-debtor that his property be executed from sale on the ground that he is an agriculturist who is cultivating the property in question and is depending for the income derived from such cultivation for his livelihood is under challenge.

2. Heard both sides.

3. Mr.Shoby K.Francis, learned counsel for the petitioner submits that the learned Subordinate Judge did not grant an effective opportunity to the petitioner for adducing evidence for substantiating the contention that the petitioner's property is not liable to be sold. According to me, no useful purpose would have been served even if the petitioner had been permitted to adduce evidence to substantiate his case that he is an agriculturist. It is to be noticed that exemption which is given under Section 60(1)(c) of the Code of Civil Procedure is exemption from attachment and sale. In the instant case the decree under execution is a mortgage decree and as held by the Division Bench of this court in **Kochumariam v. K.V.Co.** (AIR 1974

Kerala 78) Section 60(1)(c) does not have to do with mortgage decrees but deals only with attachments and sales pursuant to attachment. When there is a mortgage, there is no necessity for attachment either in execution or on the original side.

4. The petitioner has another difficulty. His case is that he is an agriculturist who is cultivating the property. What is exempted under Section 60(1)(c) is not the agricultural property of the agriculturist, instead it is the houses and other buildings under the ownership and occupation of the agriculturist and their sites together with materials. Agricultural properties as such are not exempted under Section 60(1)(c).

5. In the above view of the matter, I do not find any warrant for interfering with Ext.P6. However considering the complaint of the petitioner that the respondent-Bank is showing hostile discrimination against him by not proceeding against the other items of properties shown in the decree schedule belonging to other judgment-debtors, even as I confirm the impugned order and dismiss the Writ Petition, there will be a direction to the respondent-Bank to take simultaneous steps for bringing the other properties covered by the decree also to

sale. In view of the above direction, actual sale of the petitioner's properties will not be conducted for another four more months from today.

The Writ Petition is dismissed subject to the above directions. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**